

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Howard Lutnick, *et. al.*

Application No: 10/699,858

) Art Unit: 3696

Filed: October 31, 2003

) Confirmation No.: 5127

For: KEYBOARD TRADING SYSTEM

) Examiner: Paul Shumate

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Claims 1-22 are pending in this application, of which claims 1 and 12 are independent claims.

**I. Failure to address all the limitations of claim 12 results in clear error.**

The Office Action is completely silent with regards to the following limitation of claim 12:

... in response to a trader pressing the key that corresponds to the benchmark instrument... *map the second plurality of keys such that each one of the second plurality of keys is used to place orders on a specific issue displayed in the at least one quadrant.*

(emphasis added).

Since no reason is provided, Applicants are forced to presume that the Office Action overlooks the limitation of claim 12 because it incorrectly assumed that independent claim 12 contained the exact same limitations as independent claim 1. But the Office Action is mistaken.

Thus, as an initial matter, the Office Action fails to make a *prima facie* case of obviousness for independent claim 12 (and claims 13-22, which depend therefrom), and therefore results in clear error.

**II. References cited by the Office Action fail to teach all the limitations of claim 12.**

Even if the Office Action intended to show that claim 12 was taught or suggested by the prior art, it would not have been able to do so with Belzberg and Guttermann, since neither reference teach the limitation of claim 12 (as recited immediately above in section I).

Guttermann describes a system for helping a broker manage his decks (i.e., orders received from a client). In one embodiment, the decks are partitioned into multiple deck panes with each deck pane “corresponding to a different commodity.” Guttermann, col. 13, lines 7-10. To execute an order, the broker selects an order “by touching the corresponding order icon in the deck pane.” *Id.* at col. 13, lines 27-29. The broker then manually enters the “identification code of his counterpart broker” (either via a keyboard or pressing a button with the counterpart broker’s initials) and presses the “SEND FILL ‘button’.” *Id.*, col. 13, lines 19-26; lines 33-36; Fig.2c. If a broker receives a large order that requires multiple counterpart brokers to execute, then Guttermann describes the following process:

After touching the order icon in the deck pane 135, the broker would touch the PARTIAL button, and the order’s price and time stamp would appear in the fill pane 140, as described above, and the quantity would appear in the TOTAL FILLED area. The broker would then enter the quantity and identification codes of the counterpart broker and firm for the first order, the TOTAL FILLED amount would decrement by that quantity, and another line of information entry area would appear in the fill pane. The broker would then enter the quantity and identification codes of the counterpart broker and firm for the second order, and the TOTAL FILLED amount would decrement accordingly.

*Id.* at col. 13, lines 47-68.

Nowhere do the cited-portions of Guttermann teach or suggest “*map[ping] the second plurality of keys*” in response to “*a trader pressing the key that corresponds to the benchmark instrument*,” such that “*each one of the second plurality of keys is used to place orders on a specific issue displayed in the at least one quadrant*,” as recited in claim 12.

At best, Guttermann discloses buttons that correspond to “predetermined” counterpart brokers and a “PARTIAL” button that decrements a “TOTAL FILLED” area. *Id.* at lines 19-26;

47-68. However, both the buttons for “predetermined” counterpart brokers and the “PARTIAL” button are static in nature—they perform the same function at all times. By contrast, claim 12 describes keys that are dynamic and are continually remapped each time the trader selects a quadrant. To place an order, the trader simply presses “*one of the second plurality of keys*.” He neither needs to enter the quantity of the order or the name of a counterpart broker to execute the order.

As conceded by the Office Action, Belzberg fails to teach or suggest the deficiencies of Gutterman. Final Action, p. 3.

Because the prior art references fail to teach or suggest all the limitations of claim 12, no *prima facie* case of obviousness can be made.

## **CONCLUSION**

Because the Examiner failed to establish a *prima facie* case of obviousness with respect to claims 12-22, withdrawal of the rejections is respectfully requested.

Date: October 6, 2009 Respectfully submitted,

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